November 24, 2008

Via Electronic Filing

Honorable Jonathan Adelstein
Federal Communications Commission
445 12th Street SW, Room: 8-A302
Washington, DC 20554

Re: WT Docket Nos. 07-195, 04-356, Notification of Written Ex Parte Presentation

Dear Commissioner Adelstein:

Pursuant to Section 1.1206(b) of the Commission's rules, this *ex parte* letter documents the meeting on Friday, November 21, 2008 between John Muleta, Michael Gardner and the undersigned on behalf of M2Z Networks and you and Renée Crittendon.

During our meeting, we discussed the importance of timely decisions by the FCC, particularly in matters that could help increase the level of broadband penetration and adoption. We noted that the AWS-3 proceeding, by all objective measures, was currently overdue. Last year, the Commission unanimously agreed to conclude the rulemaking on August 14, 2008.[1] Although the August deadline was voluntary, Section 7(b) of the Communications Act mandates that "[i]f the Commission *initiates its own proceeding* for a new technology or service, such proceeding shall be completed within 12 months after it is initiated [September 18, 2008]."[2] Unfortunately, neither deadline has been met.

In light of the delays in this proceeding, we were pleased to hear that you are in favor of the Office of Engineering and Technology recommendation that the AWS-3 band may be comprised of a 25 MHz band that utilizes a strict 60+10 log(P) out-of-band emission limit and that you are also in favor of the changes that Commissioner Copps previously recommended be made to the draft AWS-3 item. Now that there is a consensus at the Commission on how to move forward with the key portions of this item, we look forward to an expedited resolution of this matter.

[1] *See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, WT Docket No. 07-195, Notice of Proposed Rulemaking, FCC 07-164 ¶ 4 (rel. Sept. 19, 2007) ("*AWS-3 NPRM*") ("We commit to issuing an order adopting rules in this proceeding within nine months following the publication of this Notice in the Federal Register".). Federal Register publication of the *AWS-3 NPRM* occurred on November 14, 2007.

[2] 47 U.S.C. § 157(b). Notably, the *AWS-3 NPRM* (which initiated this proceeding on September 19, 2007) borrowed the key phrase in the statutory language and explained that the Commission committed to a date certain resolution in AWS-3 "to facilitate the introduction of new and innovative wireless broadband services to American consumers as soon as possible." *See AWS-3 NPRM* ¶ 4 (emphasis added).

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As we indicated in our conversation, it is our understanding that the item before you does not prohibit asymmetric pairing with the 2020-2025 MHz band or any other block should the licensee make the determination that such a pairing is the best approach for providing a nationwide lifeline broadband service. Our concern is that recent filings are advocating a "mandatory" asymmetric pairing which is a backward looking technological approach that greatly limits the licensee's flexibility. We believe strongly that this mandatory "asymmetric" pairing is being brought up to further delay a decision on AWS-3 which is over 2.5 years in the making.[3]

The status of the 2020-2025 MHz band[4] need not further delay this proceeding. As explained below, there are a number of useful services that could leverage that portion of spectrum independent of the AWS-3 band using high density operations for low power personal devices that are confined to in-building or personal area networks or higher power directional uplinks. Indeed there are several pending proceedings at the Commission that could benefit greatly from the availability of the 2020-2025 MHz band on a stand alone basis. As such, the Commission may wish to subject the 2020-2025 MHz band to a *Further Notice* to determine whether it should establish rules for that band to promote:

- ***Personal Devices***: low power consumer devices providing local area network operations such as home monitoring systems, cordless phones (i.e. DECT),[5] personal monitoring networks for medical or athletic purposes[6] and wireless microphones.[7] The characteristics of these devices are that they are short distance, low power, and would not be present (nor useful) in areas where BAS systems would be operating thereby limiting potential interference.

[3] We note that you have previously advocated for a timely resolution of AWS-3: "I urge my colleagues not to wait for months until we issue an order allowing for the innovative use of this spectrum. The Commission has already accumulated a substantial record in this proceeding on the best uses of this spectrum." *See* Separate Statement of Commissioner Jonathan Adelstein to *Applications for License and Authority to Operate in the 2155-2175 MHz Band, Petitions for Forbearance Under 47 U.S.C. § 160*, WT Docket Nos. 07-16 & 07-30, Order, FCC 07-161 (rel. Aug. 31, 2007) (emphasis added); *see also* Separate Statement of Commissioner Jonathan Adelstein to *AWS-3 NPRM* ("The Commission has to do what it can to promote opportunities to expand wireless connectivity and to ensure that available and desired spectrum is put to use in a timely fashion. In this regard, I am pleased that we are committing to conclude [the AWS-3] proceeding and make this spectrum available in a fixed timeframe [August 14, 2008], although I would have preferred to do it sooner.").

[4] The 2020-2025 MHz band is between the MSS uplink band of 1980-2020 MHz and the Broadcast Auxiliary Service (BAS) band. Particular to note is that the BAS band is used as a mobile station downlink from 2025-2025.5 MHz and as uplink above 2025.5 MHz. The out-of-band emission limit of the MSS ATC uplink of 43 + 10 log (P) (over a 1 MHz bandwidth) provides the basis of protection for the BAS downlink as well as the expected number of MSS ATC uplink operations near BAS operations. Large number of mobile, exterior users transmitting uplink on the 2020-2025 MHz band could be problematic for BAS operations.

[5] The DECT Forum has explained that the Commission's consideration of H Block includes overly restrictive interference rules. *See* Comments of the DECT Forum to AWS-3 Further Notice of Proposed Rulemaking, WT Dockets 07-195 and 04-356 (filed July 21, 2008). The 2020-2025 MHz band, with its more generous technical rules, could provide a viable option for the DECT Forum.

[6] *See* MedRadio Proceeding (ET Docket No. 08-59).

[7] *See* Informal Complaint and Petition of The Public Interest Spectrum Coalition (filed July 16, 2008).

- ***Directional Uplinks***: telemetry and data services that have limited uplink sites such as data links for aircraft to provide internet access for airline passengers,[8] data telemetry uplink for aircraft, and fixed data link services. The characteristics of these services are that they are limited in the number of sites, generally not co-located with BAS systems, and that the use of directional antennas would limit any potential interference to adjacent bands.

Indeed, a *Further Notice* concerning the 2020-2025 MHz band may wish to examine asymmetric pairing with AWS-3 and other bands as a possibility.

While a 2020-2025 MHz *Further Notice* remains pending, the Commission could move forward with service and technical rules for a nationwide license in AWS-3 that will provide consumers with a "lifeline broadband service." As we have previously mentioned, there are strong technical, practical and policy arguments in support of nationwide licensing of the AWS-3 band.[9] In particular, we note the Commission's rationale in establishing a nationwide license area in the 1670-1675 MHz band is highly relevant to the AWS-3 proceeding:

> For the 1670-1675 MHz band, we are adopting a single nationwide license as proposed in the Service Rules Notice. We believe that nationwide licensing provides licensees flexibility to develop and provide new services ubiquitously across the entire band.....While NTCA and RTG oppose a nationwide licensing approach for this band, suggesting instead smaller geographic area licensing throughout the government transfer bands, we believe that nationwide licensing in the 1670-1675 MHz band serves the public interest by promoting flexibility and efficient spectrum markets and facilitates the deployment of ubiquitous, innovative communications services to the public. We also believe nationwide licensing in this band will provide economies of scale for those seeking to offer new technology. In this connection, we have on more than one occasion noted that nationwide assignments are more likely to stimulate investment in new technologies and can provide a critical means of achieving greater spectrum efficiency and promoting research and development.[10]

[8] In this proceeding, AirCell urged the Commission to "ensure that the service rules adopted in this proceeding make the band viable for use by air-to-ground ("ATG") broadband providers. In particular, the band plan should include at least one 5 MHz license that is auctioned on a nationwide basis." *See* Comments of AirCell LLC, WT Docket 07-195 (filed Dec. 14, 2007).

[9] *See* Reply Comments of M2Z Networks, Inc., WT Docket 07-195, at 22-25, (filed Jan. 14, 2008).

[10] In the Matter of Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, Report and Order, WT Docket No. 02-8, 17 FCC Rcd 9980 ¶ 21 (2002).

Thank you for your consideration of these matters. Please let me know if you have any questions regarding this submission.

Sincerely,

Uzoma Onyeije

cc: Renée Crittendon